

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

★ JAN 26 2006 ★

BROOKLYN OFFICE

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LEROY JONES,

Petitioner,

MEMORANDUM and
ORDER
CV 02-5746

-against-

(JBW)

VICTOR HERBERT,

Respondent.

-----X
JACK B. WEINSTEIN, *Senior District Judge:*

By his brief dated June 24, 2005, respondent contended that the claim of ineffective counsel is unexhausted and procedurally barred. Brief pp.1-2. Has this claim now been exhausted?

Has the claim of failure of the court to properly inquire before permitting petitioner to waive his right to counsel been exhausted? The State in its brief claims non-exhaustion. *Id.* p. 16. This now appears to be the main claim of petitioner.

Exhaustion also appears to be an issue related to the claim of ineffective appellate counsel. *Id.* p.23.

The brief for petitioner does not seem to address these exhaustion issues. They should be addressed orally at the hearing with authorities and reference to the state record.

The parties are reminded that petitioner's claims of ineffective trial and appellate counsel requires, under practice of the Court of Appeals for the Second Circuit, that the trial advisory counsel and the appellate counsel appear at the hearing

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scheduled in this court or provide alternative assurances on the merits. See Sparman v. Edwards, 154 F.3d 51 (2d Cir. 1998).

SO ORDERED.

JACK B. WEINSTEIN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York
January 19, 2006